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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS V. ROSSNAGEL,

Plaintiff,

v.

FARMERS INSURANCE
EXCHANGE,

Defendant.

2:11-CV-677 JCM (GWF)

ORDER

Presently before the court is defendant Farmers Insurance Exchange's motion for judgment on the pleadings as to plaintiff's first and fourth claims for relief. (Doc. # 29). Plaintiff's response was due August 23, 2012. To date, the plaintiff has failed to respond.

Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay the trial." Rule 12(c) is "functionally identical to Rule 12(b)(6) and...the same standard of review applies to motions brought under either rule." *Cafasso v. Gen. Dynamics C4 Systems*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (internal citation and quotation omitted). Therefore, "[a] judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005) (internal quotations and citations omitted).

...

1 Pursuant to Local Rule 7-2(b), an opposing party's failure to file a timely response to any
2 motion constitutes the party's consent to the granting of the motion and is proper grounds for
3 dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the
4 district court is required to weigh several factors: "(1) the public's interest in expeditious resolution
5 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
6 the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic
7 sanctions." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d
8 1421, 1423 (9th Cir. 1986)).

9 In light of the plaintiff's failure to respond and weighing the factors identified in *Ghazali*,
10 the court finds dismissal appropriate.

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion for
13 judgment on the pleadings as to plaintiff's first and fourth claims for relief (doc. # 29) be, and the
14 same hereby is, GRANTED. Plaintiff's first and fourth claims for relief are hereby dismissed without
15 prejudice.

16 DATED August 29, 2012.

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19 **UNITED STATES DISTRICT JUDGE**